material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Kansas City, Missouri. The specific maps under consideration are 1998 aircraft Noise Exposure Maps in the submission. The FAA has determined that these maps for Kansas City International Airport are in compliance with applicable requirements. This determination is effective on February 9, 1996. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Kansas City International Airport, also effective on February 9, 1996. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before August 7, 1996.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, D.C. 20591

Federal Aviation Administration, Airports Division, 601 E. 12th Street, Kansas City, MO 64106

Aviation Department, Administrative Offices, Department of Planning & Development, Kansas City International Airport, 1 International Square, Kansas City, MO 64153.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Kansas City, Missouri on February 9, 1996.

George A. Hendon,

Manager, Airports Division.

[FR Doc. 96–4266 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

[Docket No. 28472]

Policy and Procedures Concerning the Use of Airport Revenue

AGENCY: Federal Aviation Administration (FAA), Transportation.

ACTION: Notice of proposed policy; request for comments.

SUMMARY: This document proposes a statement of policy and procedures concerning the use of airport revenue. This document discusses in detail the requirement that revenue at public airports that have received Federal grants generally be used only for airport purposes. The document proposes definitions of ''airport revenue'' and ''revenue diversion,'' and discusses the permitted and prohibited uses of airport revenue, and the procedures for monitoring compliance with the revenue use requirement. A statement of policy is required by the Federal Aviation Administration Authorization Act of 1994. The FAA is issuing a proposed policy and requesting public comment because of substantial public and industry interest in the subject matter. While the policy statement proposed is not made effective at this time, statutory requirements relating to the use of airport revenue remain in effect and will be enforced by the FAA. Airport sponsors may assume that the FAA would act consistently with the views expressed in this document in any enforcement action for revenue diversion taken before a final policy statement is issued.

DATES: Comments must be received by April 26, 1996.

ADDRESSES: Comments should be mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28472, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: ''Docket No. 28472.'' Commenters wishing the FAA to acknowledge receipt of their comments must include a pre-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 28472.'' The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Benedict D. Castellano, Manager, Airport Safety and Compliance Branch, AAS–310, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267–8728; or Jonathan W. Cross, Airports Law Branch, AGC–610, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3473.

SUPPLEMENTARY INFORMATION: This proposed statement of policy and related procedures is being published pursuant to section 112(a) of the Federal Aviation Administration Authorization Act of 1994, Pub. L. No. 103–305 (August 23, 1994) (1994 Authorization Act). That section requires the Secretary

to establish policies and procedures assuring the ''prompt and effective enforcement'' of the requirement relating to the use of airport revenue (also called the ''revenue retention requirement'') (49 U.S.C. 47107(b)) and the requirement that airports be as self-sustaining as possible (49 U.S.C. 47107(a)(13)), and of the Airport Improvement Program (AIP) sponsor assurances made under these sections. Section 112 includes specific guidance and requirements for the mandated policies and procedures.

For convenience, the term ''sponsor'' is used throughout this document to mean the state or local government body obligated under an airport grant agreement. For purposes of the proposed policy statement the term is generally interchangeable with the term ''airport owner or operator'' used in some statutes. A sponsor may be an entity that exists only to operate the airport, such as an airport authority established by state law. Other airports are owned by a state, county, or city government and operated by an agency of that government, in which case the state, county, or city is the sponsor, rather than the subordinate agency.

The Airport and Airway Improvement Act of 1982

Under the Airport and Airway Improvement Act of 1982, as amended (AAIA), part of title V of the Tax Equity and Fiscal Responsibility Act, Public Law 97–248, repealed and reenacted without substantive change, Public Law 103–272 (July 5, 1994), 49 U.S.C. 47101, et seq., as amended by Public Law 103–305 (August 23, 1994), public agencies receiving Federal grants for airport development since September 3, 1982, are required to comply with the revenue retention requirement, section 511(a)(12) of the AAIA, now codified at 49 U.S.C. 47107(b).

As originally enacted in 1982, the revenue retention assurance required airport owners to use ''* * * all revenues generated by the airport * * * for the capital or operating costs of the airport, the local airport system, or other local facilities which are owned or operated by the owner or operator of the airport and directly related to the actual transportation of passengers or property.'' The plain purpose of section 511(a)(12) was to prevent an airport owner or operator who receives Federal assistance from using airport revenues for expenditures unrelated to the airport. Thus, according to the requirement, a grant recipient could not use airport revenues to pay for ''capital or operating costs'' that were not airport-related. According to a recent House Report,

> The rationale for [the revenue retention requirement] is that the Federal AIP program can underwrite only about 20% to 30% of the total capital development needed by airports. To ensure the maximum effectiveness of the AIP program, airports should also spend all of the money they generate to operate and develop the airport. A federal grant should not furnish an opportunity for an airport to use federal funds to replace other airport generated funds, and then use the latter for general governmental purposes, resulting in no net capital improvements for the federal grant dollars expended.
>
> H.R. Rep. No. 103–240, 103d Cong., 1st Sess. 14 (1993).

The original revenue retention requirement also contained an exception, or ''grandfather'' provision, permitting the use of airport revenue for non-airport purposes in certain cases in which the use predates the AAIA. Specifically, revenue use restrictions did not apply where pre-September 3, 1982, covenants or assurances in debt obligations previously issued by the airport owner or operator, or provisions in governing statutes enacted before September 3, 1982, that control the owner's or operator's financing, provided for the use of revenues from any of the airport owner's or operator's facilities, including the airport, to support not only the airport but also the airport owner's or operator's general debt obligations or other facilities.

The House and Senate Conference Reports on the AAIA describe the revenue retention requirement in section 511(a)(12) as follows:

> One [requirement] is that airports receiving assistance under this program must dedicate all revenues generated by the airport for the capital [and] operating costs of that airport, the local airport system, or other local facilities which are owned by the owner or operator of the airport and used for the transportation of passengers or property. The provision is designed to ensure that airport systems which are receiving Federal assistance are utilizing all locally generated revenue for the systems which they operate. Airports that are part of a unified ports authority are exempt from this requirement if covenants or assurances in previously issued debt obligations or controlling statutes require that these funds are available for use at other port facilities.

However, airport users should not be burdened with ''hidden taxation'' for unrelated municipal services.

This provision is not intended to apply to revenue generated by facilities which are located on airport property but are unrelated to air operations or services which support or facilitate air transportation. It would accordingly not apply to revenue generated by such facilities as a water reservoir or a convention center which happen to be located on airport property, but which serve neither the airport nor any air transportation purpose. It would apply to such facilities as terminal concessions and parking lots serving the terminal or other air transportation purposes.

> H.R. Conf. Rep. No. 97–760, 97th Cong., 2d Sess. pt. 3,697,712 (1982); see also, S. Rep. No. 97–494, vol. 2, 97th Cong., 2d Sess. 28 (1982).

The Airport and Airway Safety and Capacity Expansion Act of 1987

The Airport and Airway Safety and Capacity Expansion Act of 1987, Public Law 100–223 (December 30, 1987), amended the revenue retention requirement by requiring that such local facilities be ''directly and substantially related to actual air transportation of passengers or property.'' This amendment narrowed the permissible uses of airport revenues to expenditures that are not only ''directly'' but also ''substantially'' related to actual air transportation, to further assure that such revenues are not diverted for general expenses. The 1987 Act also required local taxes on aviation fuel enacted after December 30, 1987, to be spent on the airport, and slightly modified the grandfathering language to clarify its application only to pre-September 3, 1982, debt obligations or legislation controlling financing. The 1987 Act's legislative history reaffirms the earlier statement that § 511(a)(12) is not intended to apply to revenue generated by facilities located on airport property but unrelated to air operations or services that support or facilitate air transportation. H.R. Conf. Rep. No. 100–484, 100th Cong., 2d Sess. 63 (1987), reprinted in 1987 U.S.C.C.A.N. 2638; see also, H.R. Rep. No. 100–123 (II), 100th Cong., 2d Sess. 14, reprinted in 1987 U.S.C.C.A.N. 2601, 2613.

The Federal Aviation Administration Authorization Act of 1994

Several provisions of the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994), address revenue diversion. Section 110 adds a policy statement to Title 49, Chapter 471, ''Airport Development,'' concerning the requirement that airports be as self-sustaining as possible. That section restates the requirement and also states that in establishing new fees, rates, and charges, and generating revenues from all sources, airport owners and operators should not seek to create revenue surpluses that exceed the amounts to be used for airport system

purposes and for other purposes for which airport revenues may be spent under section 47107(b) of this title, including reasonable reserves and other funds to facilitate financing and cover contingencies.

Section 111 adds a new sponsor assurance. Airport owners or operators will now be required to submit to the Secretary and make available to the public an annual report listing all amounts paid by the airport to other units of government and the purposes for the payments. Airport owners or operators must also make available a listing of all services and property provided to other units of government and the amount of compensation received for provision of each such service and property. Section 111 also requires the Secretary to issue a simplified format for reporting applicable to airports to assist in public understanding of airport finances and to provide information concerning the amount of any revenue surplus, the amount of concession-generated revenue, and other information required by the Secretary. The Secretary is also required to provide an annual summary of the financial reports to various Congressional committees. See, H.R. Conf. Rep. No. 103–677, 103d Cong., 2d Sess. 68 (1994).

Section 112(a) requires the Secretary to establish policies and procedures that will assure the prompt and effective enforcement of the statutory provisions in 49 U.S.C. 47107, subsections (a)(13) (the requirement that airports be as self-sustaining as possible) and (b) (the revenue retention requirement) and the sponsor assurances made under such subsections. Section 112(a) also sets forth four prohibited forms of revenue diversion, which are included in the proposed policy statement.

Section 112(b) amends 49 U.S.C. 47111, ''Payments under project grant agreements,'' and requires the Secretary to withhold approval of any new grant application, or any proposed modification that would increase funding, and withhold approval of any new application to impose a Passenger Facility Charge (PFC), if after notice and opportunity for hearing, the Secretary has found a violation of 49 U.S.C. 47107(b), as further defined by 49 U.S.C. 47107(l), or a violation of the assurance made under 49 U.S.C. 47107(b), and the sponsor has not taken corrective action to cure the violation. Section 112(b) also authorizes the Secretary to seek enforcement through writ of injunction in United States district court for any violation of Title 49, Chapter 471, or the sponsor assurances made under that Chapter.

Section 112(c) authorizes the Secretary to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the revenue retention requirement. Civil penalties may not be imposed on any individual and the Secretary has the authority to compromise the penalties. See, H.R. Conf. Rep. No. 103–677, 103d Cong., 2d Sess. 67–68 (1994).

Section 112(d) requires the Secretary, in administering the 1994 Authorization Act's revenue diversion provisions and the AIP discretionary grants, to consider the amount being lawfully diverted pursuant to the grandfathering provision by the sponsor compared to the amount being sought in discretionary grants in reviewing the grant application. Consequently, in addition to the prohibition against awarding grants to airport sponsors that have illegally diverted revenue, the Secretary must now consider the lawful-diversion of airport revenues by airport sponsors under the grandfather provision as a factor militating against the distribution of discretionary grants to the airport, if the amounts being lawfully diverted exceed the amounts so lawfully diverted in the first year after enactment of section 112, adjusted for inflation.

Section 112(e), which amends the Anti-Head Tax Act, 49 U.S.C. 40116(d)(2)(A), prohibits a State, political subdivision, or an authority acting for a State or political subdivision from collecting a new tax, fee, or charge which is imposed exclusively upon any business located at an airport or operating as a permittee of the airport, other than a tax, fee, or charge utilized for airport or aeronautical purposes.

Investigation by the House Committee on Appropriations

In December 1993, the Surveys and Investigations Staff of the United States House of Representatives presented a report to the Committee on Appropriations concerning the diversion of airport revenues from commercial air service airports in the United States. The staff stated in the report that out of 30 airports investigated, airport revenue was being diverted at 17 airports. The staff recognized, however, that most of the revenue was being diverted lawfully under the grandfather provision. The report stated that of the approximately $900 million that was diverted, $641.3 million was lawfully diverted under the grandfather exception (according to the DOT General Counsel's Office), and $140.8 million was diverted under the grandfather exception where the sponsors themselves proclaimed the exception. The report stated that $111.7 million of the $900 million total was diverted at airports where the sponsors did not appear to meet the statutory exception. The report stated that more FAA oversight was needed to assure that sponsors comply with the conditions required by Federal law on the use of airport revenue. The DOT Office of the Inspector General (OIG) has conducted audits of 13 of the 30 airports investigated by the committee staff.

Investigation by the Department of Transportation's Office of the Inspector General

On March 7, 1994, the DOT OIG released a report concerning the FAA's monitoring of the use of airport revenues at 22 airports throughout the United States. That report concluded that FAA monitoring was not adequate to ensure fee and rental structures were maintained that made airports as self-sustaining as possible, or that airport revenues were used only for the capital and operating costs of the airports. Where the OIG report indicated actual cases of potential revenue diversion, the FAA has investigated and taken action to restore the sponsor to compliance. At airports where the OIG cited the failure to charge fair market value for aeronautical facilities, the FAA finds this latter practice consistent with the Policy Regarding Airport Rates and Charges issued in February 1995, which limits a sponsor's total charges to aeronautical users to the total cost of services provided, and the proposed revision of the policy issued in September 1995. The self-sustaining obligation does not require a sponsor to charge aeronautical users more than its aeronautical costs. The OIG recommended that the FAA increase its monitoring of airport sponsors. It should be noted that more than 2,500 airports are subject to such monitoring. The FAA expects to continue to work with the OIG on these issues.

Airport Revenue

Background

In addressing the requirement that airport revenue be used for certain purposes, it is first necessary to make clear which funds received by an airport sponsor ''* * * all revenues generated by the airport,'' within the meaning of 49 U.S.C. 47107(b). Airports generate revenues for the sponsor, for air carriers, and for commercial tenants. While the income received by air carriers and tenants for sales and business activity on the airport is not ''airport revenue,'' within the meaning of section 47107(b), most revenue received by the sponsor as airport owner and operator *is*

considered airport revenue. the airport sponsor receives payments for the use of the airport in the form of landing fees, land and facility rental, and, in some cases, a share of the gross receipts or profit (e.g., concession fees or royalties) from the commercial tenant. The sponsor may receive revenue from the sale of real or personal airport property. A sponsor may also receive income from an airport-related facility that is not on the airport property map, commonly referred to as ''Exhibit A,'' but that supports the operation of the airport, such as a remote parking lot or downtown terminal funded from airport revenues. Sometimes, the airport sponsor directly engages in a commercial activity and thus receives all of the gross receipts of the commercial activity rather than just the rental it would receive as landlord.

FAA Internal Orders

The FAA routinely issues internal guidance to its employees in the form of nonregulatory directives, including handbooks. Orders do not seek to prescribe conduct for persons outside the agency, and they incorporate provisions for deviation from the stated guidance by agency personnel.

The Airport Improvement Program (AIP) Handbook, FAA Order 5100.38A (October 24, 1989), and Airport Compliance Requirements, FAA Order 5190.6A (October 2, 1989), both contain provisions that address the use of airport revenue. The agency believes in most cases that the statements in these orders are consistent with the proposed policy; however, to the extent that there is any apparent inconsistency, the final policy statement will take precedence and the orders will be revised to reflect the policies adopted. The final policy would also supersede any other inconsistent statements of agency policy appearing in correspondence or other form.

Definition of Airport Revenue

Under this proposed policy, the following types of fees, charges, rents, or other payments received by or accruing to the sponsor (revenue) are considered to be ''airport revenue:''

(1) *Revenue from air carriers, tenants, transferees, and other parties.* Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

(a) for the right to conduct an activity on the airport or to use or occupy airport property;

(b) for the sale, transfer, or disposition of real airport property not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including sale through a condemnation proceeding;

(c) for the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

(d) for the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport;

(2) *Revenue from sponsor activities.* Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

(a) from any activity conducted by the sponsor on airport property acquired with Federal assistance;

(b) from any aeronautical activity conducted by the sponsor; or

(c) from any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, up to an amount appropriately attributable to the use of the property (such as the amount of rent that would be charged a commercial tenant).

In general, revenue received by the sponsor for an airport activity is ''airport revenue.'' However, in consideration of legislative history, a distinction is made where the sponsor itself undertakes an activity on airport property not acquired with Federal assistance, if the activity is not related to air operations or services that support or facilitate air transportation. In that case, as represented in subparagraph (2)(c) of the definition, only an amount properly attributable for the use of airport property, such as the rent that a commercial tenant would pay, would be considered airport revenue. Subparagraph (2)(c) of the definition of ''airport revenue'' results from legislative history that indicates the revenue retention requirement is not intended to apply to all revenue generated by facilities that are located on airport property but are ''* * * unrelated to air operations or services which support or facilitate air transportation.'' H.R. Conf. Rep. No. 97–760, 97th Cong., 2d Sess. pt. 3, 697,712 (1982). The language states that the requirement would therefore not apply to revenue generated by facilities such as a ''* * * water reservoir or a convention center which happen to be located on airport property, but which serve neither the airport nor any air transportation purpose.'' Id.

In a typical airport situation, a commercial enterprise earns gross income on the airport and then makes a payment to the airport sponsor for the use of the facility and the right to conduct business on the airport. The gross income to the enterprise is not airport revenue, but the payments to the sponsor are. We read the report language concerning the conference center and reservoir to apply not to this typical situation, which would result in free use of airport property, but rather to the special case in which a local government is the airport sponsor and is at the same time conducting a nonaeronautical enterprise on the airport (such as a convention center). In this latter case the sponsor is technically receiving all of the gross receipts of the enterprise. Since the report language indicates that such gross receipts should not be considered airport revenue, we read the legislative history to mean that only the amount properly attributable for the use of the airport property (such as the amount of facility or land rental a commercial tenant would pay) would be considered to constitute airport revenue. The remaining gross receipts would not be airport revenue and could be used for non-airport purposes. This interpretation is consistent with the report language, and ensures that the airport receives an equivalent amount for the commercial use of property whether the property is used by a private tenant or by the sponsor itself. If the sponsor activity is related to air transportation, then the entire amount of gross receipts would be airport revenue, as represented in subparagraphs (2)(a) and (2)(b) of the definition.

Airport revenue does not include Passenger Facility Charges received by a sponsor as public agency in accordance with 49 U.S.C. 40117 and 14 C.F.R. part 158. Also, the disposition of land acquired by Federal donation or with Federal assistance is governed by specific requirements included in the agreement between the United States and the sponsor relating to such land. Specific provisions applying in both cases are more restrictive than the general restrictions on use of airport revenue under section 47107(b).

Use of Proceeds From the Sale of Airport Land

Background

An airport sponsor that acquires real property for airport purposes may do so through any of four methods. First, the airport sponsor may receive a Federal grant which will typically pay a percentage of the project costs. Second,

the property may be conveyed to the airport sponsor by the Federal Government for no consideration through the Surplus Property Act or through cost-free transfers pursuant to airport aid statutes. Third, the airport sponsor may acquire property for the airport paid for by the general governmental or municipality funds or donated privately. Fourth, the airport sponsor may utilize airport revenues to acquire the property or to reimburse its general funds for an acquisition.

Use of proceeds resulting from the sale of real property acquired through the first and second methods described above is generally straightforward. In those examples, the use of sales proceeds is likely to be governed by special provisions contained in the agreement between the United States and the sponsor. As a general rule, such proceeds must be applied to the airport and be used for aeronautical purposes or, in the case of grant-acquired land, returned to the Aviation Trust Fund.

Use of sale proceeds resulting from the sale of real property acquired with government or municipal funds, airport revenues, or by private donation, requires greater discussion. The paramount issue is whether the sales proceeds from airport real property fall within the scope of the revenue retention requirement's language, ''* * * all revenues generated by the airport,'' 49 U.S.C. 47107(b), where the property was not donated by the United States or acquired with Federal assistance. This language is not defined in the AAIA or subsequent statutes. Thus, the Secretary has the authority to define airport revenue in a manner consistent with the purposes of 511(a)(12) of the AAIA and 49 U.S.C. 47107(b). As stated in the proposed policy, we propose that the term ''* * * all revenues generated by the airport * * *'' should include proceeds from the sale of all property donated by the United States or acquired with Federal financial assistance.

The revenue retention requirement should be read in the overall context of the statute and underlying Federal policy—i.e., that users of the airport system should pay for the cost of that system, and that airports should be self-sustaining (see, 49 U.S.C. 47107(a)(13)), and that users should not be forced to pay ''hidden taxes'' to finance other state and municipal programs. If sales proceeds from parcels of realty are treated as airport revenue, the goal of self-sustainability is furthered; more resources are available to fund the capital and operating costs of the airport system; and airport users are not indirectly providing financial support for other state and municipal programs. Finally, this interpretation alleviates the potential need for Federal discretionary grants to fund capital improvements that could be funded from the proceeds from the sale.

This treatment is especially appropriate in the context of the fourth method—property purchased with airport revenue, including the case where airport revenues are used to reimburse the sponsor's general (nonairport) fund—to assure that the sale does not lead to the use of airport revenue indirectly for non-airport purposes.

For several reasons, the proposed policy draws no distinction between property acquired with airport revenue (directly or indirectly) and property acquired with sponsor general funds or by donation. First, the inclusion of the proceeds from the sale of all airport property is most consistent with the purposes of the revenue retention and self-sustaining grant assurances. Second, in practice it may be difficult to determine whether a particular parcel of property was acquired with airport revenue, directly or indirectly. Finally, in the case of property acquired for the airport with general funds, an airport sponsor may in any event recoup its unreimbursed capital contributions and operating expenses from airport revenues, and it may do so regardless of when the expenses were incurred. This interpretation results from a February 1991, opinion from the United States Department of Justice (DOJ), Office of Legal Counsel, concerning a proposed long-term lease of the Albany Airport, Albany County, New York. The DOJ opinion is discussed further below. While an airport sponsor could not recoup from airport revenues the value of privately donated land under this policy, it could recoup its own capital contribution.

FAA Internal Orders

To avoid possible ambiguity regarding our policy concerning sales proceeds, relevant portions of FAA Order 5190.6A, ''Airport Compliance Requirements,'' (October 2, 1989), and FAA Order 5100.38A, ''Airport Improvement Handbook'' (October 24, 1989), are discussed below. To the extent that there is any inconsistency between the provisions of these orders and this Policy, the Policy takes precedence and the orders will be revised to reflect the policies adopted in this statement.

Paragraph 7–18 of the Compliance Handbook states that in the context of land not acquired with Federal assistance (appearing on Exhibit A), * * * there is no required disposition of net revenues from sale or disposal. However, in view of the ADAP [Airport Development Aid Program]/AIP requirement that airports become as financially self-sustaining as possible, the FAA should encourage the owner to use any net revenues for needed airport development and to consider an exchange of released property for needed property.

As written, this statement did not fully reflect the FAA's operational implementation of § 511(a)(12) on a day-to-day basis, and is facially inconsistent with the policy being proposed in this document. As stated above, the Compliance Handbook will be modified to conform to the final policy adopted.

In actual past practice, the FAA discouraged the use of sale proceeds for non-airport purposes, even for property acquired through private capital or sponsor donation. While paragraph 7–18 states, ''* * * there is no required disposition of net revenues from sale or disposal * * *,'' that paragraph also provides that FAA should encourage the sponsor to devote the proceeds to the airport. Thus, the agency routinely encouraged sponsors to apply sales proceeds for the capital and operating costs of the airport. Sale approvals were not generally provided without such a promise by the sponsor.

In short, although the statement ''* * * there is no required disposition of net revenues from sale or disposal * * *'' appears in the Compliance Handbook, the agency did not traditionally allow sponsors to exercise the implied discretion. Rather, the agency actively promoted the policy of strongly encouraging the sponsor to devote the proceeds to the airport, through its power to grant releases.

Paragraph 630 of the AIP Handbook provides that, ''[a]irport revenue does not include proceeds from the sale of real property owned by the sponsor.'' This statement is correct in context because it refers to real property acquired with AIP funds. In the case of such land, specific statutory provisions governing proceeds of sale take precedence over the general requirement of § 511(a)(12). Those statutory provisions are incorporated into AIP grant agreements. Again, as a general rule, such proceeds must be applied to the airport and be used for aeronautical purposes. Thus, while the statement indicates that proceeds in this context are not airport revenue, it does not mean that the use of those proceeds is not restricted.

How the Proposed Policy Addresses Use of Sale Proceeds

Proceeds from the sale of airport real property are considered airport revenue, and are addressed in the ''Definitions'' and ''Examples of Airport Revenue'' sections of the proposed policy, as discussed above.

Paragraph C of the Applicability section in the proposed policy addresses the sale, or other transfer of ownership or control, of a publicly owned airport. Paragraph C states that such a transfer would require FAA approval in accordance with the AIP sponsor assurances and general government contract law principles. Because the proceeds of a sale or other transfer of airport property are considered airport revenue, the FAA would condition its approval of the transfer on the parties' assurance that the proceeds of sale will be dedicated to airport use. However, the FAA would take into consideration the specific elements of the proposed transfer, in determining what action would represent appropriate and sufficient compliance with the revenue use requirements of 49 U.S.C. 47107(b) under the circumstances. The FAA also invites the parties to a prospective transfer of airport property to discuss with the FAA, as early as possible in the planning stages, the effect of Federal requirements on the proposed transaction. There is no intent to hinder or prevent additional private participation in the ownership, operation, or financing of airports. The FAA welcomes proposals to do so and is committed to working with interested parties to ensure compliance with Federal laws and regulations.

Recoupment of Unreimbursed Capital or Operating Costs of the Airport

In 1990, the FAA and the Department sought the assistance of the United States Department of Justice, Office of Legal Counsel (DOJ) in applying section 511(a)(12) to the situation in which an airport sponsor seeks to use airport revenue to recoup past unreimbursed contributions to the capital and operating costs of the airport. The issue arose from a request to the FAA from Albany County, New York to transfer the Albany County Airport to a private joint venture. The joint venture proposed to lease the airport for 40 years, with an option to renew. In exchange for the lease, the County was to receive annual lease payments, which would be applied to the airport. In addition, it was to receive an initial payment of $30 million, which would be applied for general expenditures. The joint venture planned to recoup the $30 million payment and lease payment from landing fees or other airport generated revenues. Albany County justified the use of the $30 million for general expenditures under section 511(a)(12) on the grounds that the County had made unreimbursed contributions to the airport of equal or greater amounts.

Prior to the Albany proposal, the FAA had not construed section 511(a)(12) to permit recoupment in the circumstances described by Albany. After reviewing the statute, its legislative history and purpose, the DOJ advised, in a memorandum dated February 12, 1991, that section 511(a)(12) did not preclude recoupment of a sponsor's past unreimbursed contributions to the capital and operating costs of an obligated airport. The DOJ also advised that the FAA could oversee the rates charged to airport users by the joint venture—including the extent to which the rates could reflect the $30 million payment to Albany County—to ensure that these rates remained fair and reasonable. The DOJ opinion was based on the facts of the Albany County case, where the County sought recoupment of the amount originally contributed and did not seek interest on that amount. To date, the FAA has not permitted recoupment of amounts in excess of the original contribution (or the value of land at the time of contribution). That policy continues in effect pending issuance of a final policy statement in this docket. In developing a final policy on revenue diversion, the FAA will consider comments on the current agency policy on recoupment of contributions, as well as on the implications of allowing recoupment of not only the original contribution but also interest or an inflationary adjustment, or, in the case of original contributions in the form of land, allowing recoupment of the current market or inflation-adjusted value of the contributed land.

Petition for Rulemaking by Lehigh-Northampton Airport Authority

On April 3, 1995, the FAA received a Petition for Notice and Comment rule Making filed by counsel on behalf of Lehigh-Northampton Airport Authority, the owner and operator of Lehigh Valley International Airport. Petitioner urged the agency to provide for ''pre-enforcement'' notice and comment procedures prior to the promulgation of this policy statement. While styled a petition for rulemaking, petition's submission does not urge the adoption of any particular rule. Rather, the petition could be more accurately described as a legal memo supporting the use of notice and comment rulemaking procedures in the promulgation of this policy.

Technically, the policy statement is not rulemaking and does not require advance publication or public comment before issuance. However, to the extent the petition requests that the FAA's revenue diversion policy statement be issued as a proposal for public comment before adoption, the petition is granted. While the proposed policy statement is not made effective at this time, it should be recognized that longstanding statutory requirements relating to the use of airport revenue remain in effect and will be enforced. Airport sponsors may assume that the FAA would act consistently with the views expressed in this document in any enforcement action for revenue diversion taken before a final policy statement is published.

Policy Statement Concerning Airport Revenue

For the reasons discussed above, the Federal Aviation Administration proposes to adopt the following statement of policy concerning the use of airport revenue:

Policies and Procedures Concerning the Use of Airport Revenue

I. Introduction

The Federal Aviation Administration (FAA) issues this document to fulfill the statutory provisions in section 112 of the Federal Aviation Administration Authorization Act of 1994, Public Law 103–305 (August 23, 1994), 49 U.S.C. 47107(l), to establish policies and procedures on the generation and use of airport revenue. The sponsor assurance prohibiting the unlawful diversion of airport revenues, also known as the revenue retention requirement, was first mandated by Congress in 1982. Simply stated, the purpose of that assurance, now codified at 49 U.S.C. 4710(b), is to prevent an airport owner or operator receiving Federal assistance from using airport revenues for expenditures unrelated to the airport. The policies outlined in this Policy Statement generally reflect the standards that the FAA has traditionally applied in determining whether airport revenue use is consistent with Federal requirements.

II. Applicability of the Policy

A. The policy and procedures on the use of airport revenue are applicable to all public agencies that have received a grant for airport development since September 3, 1982, under the Airport and Airway Improvement Act of 1982

(AAIA), as amended repealed and recodified without substantive change Public Law 103–272 (July 5, 1994), 49 U.S.C. 47101, *et seq.* Grants issued under that statutory authority are commonly referred to as Airport Improvement Program (AIP) grants.

B. The policies and procedures do not apply to:

1. Operators of privately-owned airports that have received grants while under private ownership;

2. Operators of publicly-owned airports that have received grants only for planning (*i.e.*, not for land acquisition or development/ construction of facilities).

C. FAA approval of the sale, or other transfer of ownership or control, of a publicly owned airport is required in accordance with the AIP sponsor assurances and general government contract law principles. The proceeds of a sale of airport property are considered airport revenue (except in the case of property acquired with Federal assistance, the sale of which is subject to other restrictions under the relevant grant contract or deed). When the sale proposed is the sale of an entire airport as an operating entity, the request may present the FAA with a complex transaction in which the disposition of the proceeds of the transfer is only one of many considerations. In its review of such a proposal, the FAA would condition its approval of the transfer on the parties' assurances that the proceeds of sale will be used for the purposes required under section 4717(b). Because of the complexity of an airport sale or privatization, the provisions for ensuring that the proceeds are used for the purposes of section 47107(b) may need to be adapted to the special circumstances of the transaction. For example, in the sale of a public airport to a private entity, FAA assumes that the public owner could not simply retain all proceeds for general use; however, it may also be inappropriate to simply return the proceeds to the private buyer to use for operation of the airport. Accordingly, the disposition of the proceeds would need to be structured to meet the requirements of section 47107(b) given the special conditions and constraints imposed by the fact of a change in airport ownership. In considering and approving such requests, the FAA will remain open and flexible in specifying conditions on the use of revenue that will protect the public interest and fulfill the requirements and objectives of section 47107(b) without unnecessarily interfering with the appropriate privatization of airport infrastructure.

It is not the intention of the FAA to effectively bar airport privatization initiatives through application of the statutory requirements for use of airport revenue. Proponents of a proposed privatization or other sale of airport property clearly will need to consider the effects of Federal statutory requirements on the use of airport revenue, fair and reasonable fees for airport users, disposition of airport property, and other policies incorporated in Federal grant agreements. The FAA assumes that the proposals will be structured from the outset to comply with all such requirements, and this proposed policy is not intended to add to the considerations already involved in a transfer of airport property.

Privatization proposals can be expected to be subject to great individual variation, however, and it may be difficult for prospective parties to a particular proposal to determine how the proposed transaction might be affected by various Federal requirements, including restrictions on the use of airport revenue. While any transfer of airport property or change of sponsorship at a Federally assisted airport will require FAA approval before implementation, the FAA invites parties to a prospective proposal for privatization or transfer of an entire airport to contact the FAA as early as possible in the process. At an early stage in the planning process the FAA could discuss the effect of Federal requirements and identify revisions that would avoid potential problems for the parties.

Early contact on prospective transfers would also assist the FAA. The FAA has received very few inquiries about specific proposals for the privatization of an entire airport, and we would welcome discussions on the effects of various requirements on any such transaction. (We note that the consideration by Orange County, California, of the sale of John Wayne Airport involved a transaction between two county agencies and did not involve a transfer to a private owner.) Discussion with parties interested in potential airport privatization projects will assist the FAA in developing future policy that promotes the objectives of Administration policy on public-private partnership for infrastructure development.

III. Related Requirements

A. Policy on Airport Rates and Charges

Before receiving an AIP grant for airport development, the sponsor must assure, pursuant to 49 U.S.C. 47107(a)(1), that the airport will be made available on fair and reasonable terms without unjust discrimination. Title 49 of the U.S.C. 47107(a)(13), similarly obligates the sponsor to maintain a fee and rental structure that will make the airport as self-sustaining as possible under the circumstances existing at the airport.

Pursuant to section 113 of the Federal Aviation Administration Authorization Act of 1994, the Federal Aviation Administration, in conjunction with the Office of the Secretary of Transportation, has established a ''Policy Regarding Airport Rates and Charges,'' for use in determining whether an airport fee is reasonable. This policy lists and explains the principles that the Department of Transportation (DOT) and the FAA use in defining Federal policy with respect to fair and reasonable, and not unjustly discriminatory airport fees charged by Federally-assisted airports to air carriers and other aeronautical users. See, 60 FR 6906 (February 3, 1995); 60 FR 47012 (September 8, 1995). The policy also addresses the obligation to make the airport as self-sustaining as possible.

B. The 1994 and 1995 DOT Appropriations Acts

Section 328 of the 1994 DOT Appropriations Act and section 325 of the 1995 DOT Appropriations Act included provisions mandating that no funds provided by the Acts (i.e., all transportation funding) be made available to any State, municipality, or subdivision ''* * * that [unlawfully] diverts revenue generated by a public airport.'' See, Public Law 103–122, 107 Stat. 1223 (October 27, 1993), and Public Law 103–331, 108 Stat. 2492 (September 30, 1994).

C. Rulemaking Proceedings

1. 14 C.F.R. Part 302, Subpart F—Rules Applicable to Proceedings Concerning Airport Fees

Also pursuant to section 113, the DOT recently published procedural rules for handling complaints by air carriers and foreign air carriers seeking a determination of the reasonableness of certain airport fees. It also establishes rules that would apply to requests by the owner or operator of an airport for such a determination. See, 60 FR 6919 (February 3, 1995).

2. Proposed 14 C.F.R. Part 16, ''Rules of Practice for Federally Assisted Airport Proceedings

On June 9, 1994, a notice of proposed rulemaking was issued to establish rules of practice for the filing of complaints and adjudication of compliance matters

involving Federally assisted airports. Pending completion of that rulemaking, FAA continues to employ existing 14 C.F.R. Part 13. *See*, section on ''Sanctions for Noncompliance,'' below. See also, 59 FR 29880 (June 9, 1994); 59 FR 47568 (September 16, 1994).

D. Reporting Airport Financial Data

The format to be used in reporting certain financial data in accordance with section 111(a)(4) of the 1994 Authorization Act, 49 U.S.C. 47107(a), is currently being developed.

E. Compliance Supplement for Single Audits of State and Local Governments

In an effort to augment FAA's revenue monitoring capabilities, the agency intends to review and amend, as necessary, the audit procedures set forth in the Compliance Supplement for Single Audits of State and Local Governments to address the use of airport revenue. The FAA believes that the inclusion of appropriate indicators of revenue diversion in the suggested procedures for independent financial audits will enhance the effectiveness of agency compliance efforts.

IV. Statutory Requirements for the Use of Airport Revenue

A. The General Requirement, 49 U.S.C. § 47107(b)

The current provisions restricting the use of airport revenue are found at 49 U.S.C. 47107(b), as amended by Public Law 103–305. These provisions require the Secretary, prior to approving a project grant application for airport development, to obtain written assurances. Subsection (b)(1) requires the airport owner or operator to assure that:

* * * local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—

(A) the airport;

(B) the local airport system; or

(C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.

49 U.S.C. 47107(b)(1).

Subsection (b)(2) provides an exception to the requirements of Subsection (b)(1) for airport owners or operators having certain financial arrangements in effect prior to the enactment of the AAIA. This provision is commonly referred to as the ''grandfather'' provision. It states:

Paragraph (1) of this subsection does not apply if a provision enacted not later than September 2, 1982, in a law controlling financing by the airport owner or operator, or a covenant or assurance in a debt obligation issued not later than September 2, 1982, by the owner or operator, provides that the revenues, including local taxes on aviation fuel at public airports, from any of the facilities of the owner or operator, including the airport, be used to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

49 U.S.C. 47107(b)(2).

B. New Statutory Revenue Diversion Prohibitions

In section 112 of the FAA Authorization Act of 1994, 49 U.S.C. § 47107(l)(2) (A–D), Congress expressly prohibited the diversion of airport revenues through:

1. Direct payments or indirect payments, other than payments reflecting the value of services and facilities provided to the airport;

2. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems;

3. Payments in lieu of taxes or other assessments that exceed the value of services provided; or

4. Payments to compensate non-sponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

C. Passenger Facility Charges and Revenue Diversion

The Aviation Safety and Capacity Expansion Act of 1990 authorized the imposition of a passenger facility charge (PFC) of up to $3 per enplaned passenger, with the approval of the Secretary.

While PFC revenue is not characterized as ''airport revenue'' for purposes of this policy, specific statutory and regulatory guidelines govern the use of PFC revenue, as set forth at 49 U.S.C. 40117, ''Passenger Facility Fees,'' and 14 CFR Part 158, ''Passenger Facility Charges'' (for purposes of this policy, the terms ''passenger facility fees'' and ''passenger facility charges'' are synonymous). These provisions are more restrictive than 49 U.S.C. 47107(b), in that they provide that PFC revenue may only be used to finance the allowable costs of approved projects. The PFC regulation specifies the kinds of projects that can be funded by PFC revenue and the objectives these projects must achieve to receive FAA approval for use of PFC revenue. They prohibit expenditure of PFC revenue for other than approved projects, or collection of PFC revenue in excess of approved amounts.

V. Definitions

A. Airport Revenue

All fees, charges, rents, or other payments received by or accruing to the sponsor (revenue) for any one of the following reasons are considered to be ''airport revenue:''

(1) *Revenue from air carriers, tenants, transferees, and other parties.* Airport revenue includes all revenue received by the sponsor for the activities of others or the transfer of rights to others relating to the airport, including revenue received:

(a) for the right to conduct an activity on the airport or to use or occupy airport property;

(b) for the sale, transfer, or disposition of real airport property not acquired with Federal assistance or personal airport property not acquired with Federal assistance, or any interest in that property, including sale through a condemnation proceeding;

(c) for the sale of (or sale or lease of rights in) sponsor-owned mineral, natural, or agricultural products or water to be taken from the airport; or

(d) for the right to conduct an activity on, or for the use or disposition of, real or personal property or any interest therein owned or controlled by the sponsor and used for an airport-related purpose but not located on the airport;

(2) *Revenue from sponsor activities.* Airport revenue generally includes all revenue received by the sponsor for activities conducted by the sponsor itself as airport owner and operator, including revenue received:

(a) from any activity conducted by the sponsor on airport property acquired with Federal assistance;

(b) from any aeronautical activity conducted by the sponsor; or

(c) from any nonaeronautical activity conducted by the sponsor on airport property not acquired with Federal assistance, up to an amount appropriately attributable to the use of the property (such as the amount of rent that would be charged a commercial tenant).

B. Unlawful Revenue Diversion

Unlawful revenue diversion is the use of airport revenue for purposes other than the capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property, unless that use is grandfathered under 49 U.S.C. 47107(b)(2) and the use does not exceed the limits of the 'grandfather' clause. When such use is so grandfathered, it is known as lawful revenue diversion.

In many cases, in their consideration of the many details of a particular airport's financial decisions and use of airport funds, the FAA or the OIG may

find that the airport could have obtained a higher value for use of airport property by the sponsor, or could have paid the sponsor less for administrative services to the airport, for example. Technically, the difference in actual and ideal amounts could be considered unlawful revenue diversion under this policy. However, the FAA will not devote enforcement resources to situations in which the amounts involved are insignificant.

VI. Examples of Airport Revenue

A. Airport revenue includes, but is not limited to, revenue from:

1. service fees, landing fees, usage fees, fuel flowage fees;

2. proceeds from lease, rental, or other contractual agreements relating to the airport;

3. proceeds from the sale of fuel or other aviation products or services by the sponsor;

4. local taxes on aviation fuel enacted after December 30, 1987;

5. interest earned on investment of surplus, escrowed, or restricted airport funds;

6. subject to the Applicability provisions and except as provided for in subparagraph B., below, sale of airport property shown on the airport property map (commonly referred to as the Exhibit A in the grant application submission) including condemnation of property for another public purpose; and,

7. net income received from Federal surplus property conveyed to the sponsor for the development of income from non-aviation businesses.

B. While not considered to be airport revenue, the proceeds from the sale of land donated by the United States or acquired with Federal grants must be used in accordance with the agreement between the FAA and the sponsor. Where such an agreement gives the FAA discretion, FAA may consider this policy as a relevant factor in specifying the permissible use or uses of the proceeds.

VII. Uses of Airport Revenue

A. Permitted Uses of Airport Revenue

Airport revenue may be used for:

1. The capital or operating costs of the airport, the local airport system, or other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property. Such costs may include reimbursements to a state or local agency for the costs of services actually received and documented, subject to the terms of this policy statement. Operating costs for an airport may be both direct and indirect and may include all of the expenses and costs that are recognized under the generally accepted accounting principles and practices that apply to the airport enterprise funds of state and local government entities.

2. The repayment to the airport owner (which may or may not be the sponsor) of funds contributed by the owner for capital and operating costs of the airport and not heretofore reimbursed.

3. Purposes other than capital and operating costs of the airport, the local airport system, or other local facilities owned or operated by the sponsor and directly and substantially related to the air transportation of passengers or property, if the ''grandfather'' provisions of 49 U.S.C. 47107(b)(2) are applicable to the sponsor and the particular use. Examples of grandfathered airport sponsors may include, but are not limited to, a port authority or state department of transportation which owns or operates other transportation facilities in addition to airports, and which have pre-September 3, 1982, debt obligations or legislation governing financing and providing for use of airport revenue for non-airport purposes. Such sponsors may have obtained legal opinions from their counsel to support a claim of grandfathering. Previous DOT interpretations have found the following examples of pre-AAIA legislation to provide for the grandfather exception:

(a) Bond obligations and city ordinances requiring a five percent ''gross receipts'' fee from airport revenues. The payments were instituted in 1954 and continued in 1968.

(b) A 1955 state statute for the assessing of a five percent surcharge on all receipts and deposits in an airport revenue fund to defray central service expenses of the state.

(c) City legislation authorizing the transfer of a percentage of airport revenues, permitting an airport-air carrier settlement agreement providing for annual payments to the city of 15 percent of the airport concession revenues.

(d) A 1957 state statutory transportation program governing the financing and operations of a multi-modal transportation authority, including airport, highway, port, rail, and transit facilities, wherein state revenues, including airport revenues, support the state's transportation-related, and other, facilities. The funds flow from the airports to a state transportation trust fund, composed of all ''taxes, fees, charges, and revenues'' collected or received by the state department of transportation.

(e) A port authority's 1956 enabling act provisions specifically permitting it to use port revenue, which includes airport revenue, to satisfy debt obligations and to use revenues from each project for the expenses of the authority. The act also exempts the authority from property taxes but requires annual payments in lieu of taxes to several local governments and gives it other corporate powers. A 1978 trust agreement recognizes the use of the authority's revenue for debt servicing, facilities of the authority, its expenses, reserves, and the payment in lieu of taxes fund.

B. Consideration of Lawful Diversion of Revenues in Awarding Discretionary Grants

Airport owners or operators who lawfully divert airport revenue in accordance with the ''grandfather'' provision should be aware that 49 U.S.C. 47115(f) requires the Secretary of Transportation to consider such usage as a factor militating against the approval of an application for discretionary funds when, in the airport's fiscal year preceding the date of application for discretionary funds, the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs exceeds the amount used for such purposes in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

VIII. Prohibited Uses of Airport Revenue

Prohibited uses of airport revenue include but are not limited to:

A. Direct or indirect payments, other than payments that reflect the value of services and facilities provided to the airport, that are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government.

B. Use of airport revenues for general economic development, marketing, and promotional activities unrelated to airports or airport systems.

C. Payments in lieu of taxes, or other assessments, that exceed the value of services provided or are not based on a reasonable, transparent cost allocation formula calculated consistently for other units or cost centers of government.

D. Payments to compensate nonsponsoring governmental bodies for lost tax revenues exceeding stated tax rates.

E. Loans of airport funds to a state or local agency at less than the prevailing rate of interest.

F. Land rental to, or use of land by, the sponsor for nonaeronautical purposes at less than the amount that would be charged a commercial tenant.

G. Impact fees assessed by a nonsponsoring governmental body that the airport sponsor is not obligated to pay or that exceed such fees assessed against commercial or other governmental entities.

IX. Monitoring and Compliance

A. Detection of Revenue Diversion

To detect whether airport revenue has been diverted from an airport, the FAA will depend primarily upon four sources of information:

1. Annual report on revenue use submitted by the sponsor under the provisions of 49 U.S.C. 47107(a)(19), as amended;

2. Findings of annual single audits conducted in accordance with OMB Circular A–128, ''Audits of State and Local Governments;''

3. Investigation following a third party complaint; and

4. DOT Office of Inspector General audits.

B. Investigation of Revenue Diversion: No Formal Complaint Filed

When no formal complaint has been filed, but the FAA has an indication from one or more of these sources that airport revenue has been or is being diverted unlawfully, the FAA will notify the sponsor of the possible diversion and request that it respond to the FAA's concerns. The FAA action will depend on the response received from the sponsor:

1. *Admission of unlawful revenue diversion.* If the sponsor admits to unlawful diversion, the FAA will require the diverted amount and associated interest to be remitted to the airport account within a reasonable period of time. If the sponsor complies, the FAA will take no further action.

2. *Denial of revenue diversion or claim that diversion is ''grandfathered.''* If the sponsor denies that it has diverted airport revenue, or asserts that the diversion at issue is lawful under the exemption provisions of 49 U.S.C. 47107(b)(2), as amended, the FAA will review the information and arguments submitted by the sponsor.

(a) If the FAA determines that there is no unlawful diversion of revenue, the FAA will notify the sponsor and take no further action.

(b) If the FAA makes a preliminary finding that there has been diversion of airport revenue not exempted under Section 47107(b)(2), and the sponsor accepts that determination, the FAA will request the sponsor to take corrective action. If the sponsor complies, the FAA will take no further action.

3. *Continuing dispute.* If the FAA makes a preliminary finding that there has been diversion of airport revenue not exempted under Section 47107(b)(2), and the sponsor continues to dispute the FAA preliminary determination or does not take the corrective action requested by the FAA, the FAA will complete its investigation.

(a) If the FAA ultimately finds no occurrence of unlawful revenue diversion, the FAA will notify the sponsor and take no further enforcement action.

(b) If, after further investigation determined to be necessary, the FAA finds that there is reason to believe that there is or has been unlawful diversion of airport revenue that the sponsor refuses to terminate or correct, the FAA will issue an appropriate order proposing enforcement action.

4. *Audit or investigation by the Office of the Inspector General.* An indication of revenue diversion brought to the attention of the FAA in a report of audit or investigation issued by the DOT Office of the Inspector General (OIG) will be handled in accordance with paragraphs B.1 through B.3 above. However, the FAA will first respond to the OIG in accordance with established agency procedures and will resolve outstanding issues in the report before notifying the sponsor of the contents of the report and seeking corrective action.

C. Complaints Filed Under 14 CFR Part 13

When a formal complaint is filed against a sponsor for revenue diversion, the FAA will follow the procedures in part 13 for service of the complaint on the sponsor and investigation of the complaint. After review of submissions by the parties, investigation of the complaint, and any additional process provided in a particular case, the FAA will either dismiss the complaint or issue an appropriate order proposing enforcement action.

D. The Administrative Enforcement Process

Currently, enforcement of the requirements imposed on sponsors as a condition of the acceptance of Federal grant funds or property is accomplished through the administrative procedures set forth in 14 C.F.R. part 13, ''Investigation and Enforcement Procedures.'' Under part 13, the FAA has the authority to receive complaints, conduct informal and formal investigations, compel production of evidence, and adjudicate matters of compliance within the jurisdiction of the Administrator. If, as a result of the investigative processes described in paragraphs B and C above, the FAA finds that there is reason to proceed with enforcement action against a sponsor for unlawful revenue diversion, an order proposing enforcement action is issued by the FAA and under 14 C.F.R. 13.20. That section provides for the opportunity for a hearing on the order.

E. Sanctions for Noncompliance

As explained above, if the FAA makes a preliminary finding that airport revenue has been unlawfully diverted and the sponsor declines to take the corrective action (which usually would involve crediting the diverted amount to the airport account with interest), the FAA will propose enforcement action. A decision whether to issue a final order making the action effective is made after hearing, if a hearing is elected by the respondent. The actions required by or available to the agency for enforcement of the prohibitions against unlawful revenue diversion are:

1. *Withhold future grants.* The Secretary may withhold approval of an application in accordance with 49 U.S.C. 47106(e) if the Secretary provides the sponsor with an opportunity for a hearing and, not later than 180 days after the later of the date of the grant application or the date the Secretary discovers the noncompliance, the Secretary finds that a violation has occurred. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

2. *Withhold approval of the modification of existing grant agreements that would increase the amount of funds available.* A supplementary provision in section 112 of the 1994 Authorization Act, 49 U.S.C. 47111(e), makes mandatory not only the withholding of new grants but also withholding of a modification to an existing grant that would increase the amount of funds made available, if the Secretary finds a violation after hearing and opportunity to cure.

3. *Withhold payments under existing grants.* The Secretary may withhold a payment under a grant agreement for 180 days or less after the payment is due without providing for a hearing. However, in accordance with 49 U.S.C. 47111(d), the Secretary may withhold a payment for more than 180 days only if he or she notifies the sponsor and

provides an opportunity for a hearing and finds that the sponsor has violated the agreement. The 180-day period may be extended by agreement of the Secretary and the sponsor or in a special case by the hearing officer.

4. *Withhold approval of an application to impose a passenger facility charge.* Section 112 also makes mandatory the withholding of approval of any new application to impose a passenger facility charge under 49 U.S.C. 40117. Subsequent to withholding, applications could be approved only upon a finding by the Secretary that corrective action has been taken and that the violation no longer exists.

5. *Terminate availability of all Federal transportation funds appropriated in Fiscal Years 1994 and 1995.* Provisions of the DOT Appropriations Acts for Fiscal Years 1994 and 1995 prohibit the award of funds to a state or local subdivision that diverts revenue generated by a public airport. This provision would prohibit payment on any Federal transportation grant, including grants for highway and transit projects.

6. *File suit in United States district court.* Section 112(b) provides express authority for the agency to seek enforcement of an order in Federal court.

7. *Assess civil penalties.* Under section 112(c) of Public Law 103–305, codified at 49 U.S.C. 46301(a) and (d), the Secretary has statutory authority to impose civil penalties up to a maximum of $50,000 on airport sponsors for violations of the AIP sponsor assurance on revenue diversion. The Secretary intends to use this authority only after the airport sponsor has been given a reasonable period of time, after a violation has been clearly identified to the airport sponsor, to take corrective action to restore the funds or otherwise come into compliance before a penalty is assessed, and only after other enforcement actions, such as withholding of grants and payments, have failed to achieve compliance. Any civil penalty action under this section would be adjudicated under 14 C.F.R. part 13, Subpart G.

Issued in Washington, DC on February 20, 1996.

David L. Bennett,

Director, Office of Airport Safety and Standards.

[FR Doc. 96–4270 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

DATES: The meeting will be held on March 21, 1996 at 9 a.m. Arrange for oral presentations by March 11, 1996.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on March 21, 1996, at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Crystal City, Virginia. The agenda for the meeting will include:

- Opening Remarks.
- A review of the activities of the Performance Standards Working Group.
- A discussion of future activities and plans.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by March 11, 1996, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by bringing the copies to her at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on February 20, 1996.

Ava Robinson,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 96–4264 Filed 2–23–96; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held March 13, 1996, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Systems Management Working Group Report to the Technical Management Committee; (4) Consider and Approve: a. Proposed Final Draft, Standards for Airport Security Access Control Systems, RTCA Paper No. 019–96/TMC–207 (previously distributed), prepared by SC–183; b. Proposed Final Draft, Design Guidelines and Recommended Standards for the Implementation and Use of AMS(R)S Voice Services in a Data Link Environment, RTCA Paper No. 040–96/TMC–209 (previously distributed), prepared by SC–165; c. Proposed Disposition of Draft, Change 2 to RTCA DO–181A, Minimum Operational Performance Standards for Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/MODE S) Airborne Equipment, RTCA Paper No. 041–96/TMC–210 (previously distributed), prepared by SC–147; (5) Take Action on Open Items from Previous Meeting; Presentation by Mr. Frank Price, Cochair of the Informal South Pacific Air Traffic Services Coordinating Group (ISPACG); (6) Other Business; (7) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone) or (202) 833–9434 (fax). Members of the public may present a written statement to the committee at any time.

Issued in Washington, D.C., on February 20, 1996.

Janice L. Peters,

Designated Official.

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